

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- against -

00cr977 (JGK)

KEVIN ALLER,

ORDER

Defendant.

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JOHN G. KOELTL, District Judge:

The Court received the attached submissions from the defendant. Chambers will mail a copy of this order to the defendant.

SO ORDERED.

Dated: New York, New York  
July 8, 2020

\_\_\_\_\_/s/ John G. Koeltl\_\_\_\_\_  
John G. Koeltl  
United States District Judge

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA.

V.

KEVIN ALLER

PETITIONERS

00 CR. 977 (JGK)

THE PETITIONERS RESPONSE TO THE GOVERNMENT  
BRIEF ON HIS EMERGENCY MOTION FOR REDUCTION OF  
SENTENCE UNDER 18 U.S.C. 3582 (c)(1)(4)(i) AND EXPEDITED  
RULING REQUESTED DUE TO COVID 19

KEVIN ALLER 45021-054  
USP LEWISBURG  
P.O. BOX 1000  
LEWISBURG, P.A. 17837

EMERGENCY MOTION FOR REDUCTION OF SENTENCE UNDER  
18 U.S.C. 3582 (c)(1)(A)(i) AND EXPEDITED RULING  
REQUESTED DUE TO COVID-19

HIS COMPASSIONATE RELEASE MOTION UNDER 18 U.S.C. 3582 (c)  
(1)(A)(i) BASE ON THE EXTRAORDINARY AND COMPEING REASON  
PRESENTED BY THE COVID 19 PANDEMIC

THIS HONORABLE COURT SHOULD GRANT RELIEF BASED ON THE  
PETITIONERS VULNERABILITY TO CONTRACT COVID-19 WITHIN PRISON  
DUE TO THE POOR SANITARY CONDITIONS AT HIS FACILITY COUPLED  
WITH THE GRAVE SITUATION WITHIN MANY OF THE B.O.P.'S  
FACILITIES WHICH HAVE NUMEROUS CONFIRMED COVID-19 CASES  
AFFLICTING STAFF AND INMATES HIS CHRONIC MEDICAL  
CONDITION (ASTHMA, ONE LUNG, HIGH BLOOD PRESSURE

HIS 20 YEAR SKY A FEW WEEKS FROM THE FULL 20 YEARS  
SERVED, HIS DISCIPLINE RECORD AND NO CONTINUOUS PROGRAMM-  
ING; ADDITIONALLY THE PETITIONER ASK THIS HONORABLE  
COURT TO CONSIDER HONORABLE U.S. DISTRICT JUDGE GWIN'S  
(NORTHERN DISTRICT OF OHIO, 6TH CIR) ORDER TO THE BOP TO  
LOOSEN REQUIREMENTS ON WHO QUALIFIES FOR PLACEMENT ON  
HOME CONFINEMENT UNDER THE BUREAU'S CARES ACT AUTHORITY BY:

- 1) ELIMINATING REQUIREMENTS ON LENGTH OF SENTENCE AN INMATE HAS  
SERVED (RENEWS THE 50% SENTENCE REQUIREMENT IN ORDER  
TO BE ELIGIBLE
- 2) DISREGARDING WHETHER THE INMATE HAS GOTTEN ANY LOWER LEVEL  
SHOT'S IN THE LAST YEAR
- 3) ELIMINATING THE REQUIREMENT THAT AN INMATE BE A U.S. CITIZEN  
TO SET HOME CONFINEMENT.
- 4) LETTING INMATES WITH LOW PATTERN RISK SCORE BE PLACED ON CARES  
ACT HOME CONFINEMENT; AND

- 5) DISREGARDING THE FACT THAT AN INMATE IS SERVING TIME FOR A "VIOLENT CRIME IF THE CRIME OCCURRED MORE THAN FIVE (5) YEARS AGO

ACCORDING TO HONORABLE JUDGE BURNS ORDER TO THE BOP THE PETITIONER QUALIFIES FOR THE RELIEF HE SEEKS THEREFORE, THE PETITIONER MOST HUMBLY AND RESPECTFULLY REQUEST AN ORDER REDUCING HIS SENTENCE TO TIME SERVED AND IMPOSING AN ADDITIONAL TERM OF SUPERVISED RELEASE UP TO THE LENGTH OF THE UNSERVED PORTION OF THE ORIGINAL TERM OF IMPRISONMENT WITH A CONDITION OF HOME CONFINEMENT, FOR PART OR ALL OF THAT PERIOD OF SUPERVISION PURSUANT TO 18 U.S.C 3582 (c) (1) (4) (i) BEFORE COVID-19 RENDERS HIS REMAINING IMPRISONMENT TERM A DEATH SENTENCE...

## I

### CHARGES AND TIME SERVED

PETITIONER CAME INTO CUSTODY 10-24-2000 THEN HE PROCEEDED TO TRIAL AND FOUND GUILTY ON 9-26-2003 FOLLOWING A JURY TRIAL 1962 RACKETEERING CONSPIRACY COUNT 2 CONSPIRACY TO DISTRIBUTE AND POSSES W/ INTENT TO DISTRIBUTE COCAINE AND CRACK LESS THAN 5 GRAMS 846 841 (B) (1) (A) COUNT 3 CONSPIRACY TO COMMIT MURDER COUNT 4 1959 (1) (C)

THE PETITIONER HAS BEEN IN CUSTODY IN CONNECTION WITH THE PRESENT OFFENCE FOR APPROXIMATELY 20 YEARS OF ACTUAL INCARCERATION HAS BEEN CONTINUOUSLY PROGRAMMING AND PERFORMING HIS WORK DETAIL DUTIES DILIGENTLY

## LEGAL FRAMEWORK OF COMPASSIONATE RELEASE

### A) COMPASSIONATE RELEASE BEFORE THE FIRST STEP ACT.

THE COMPASSIONATE RELEASE STATUTE EMPOWERS COURTS TO REDUCE A DEFENDANT'S SENTENCE, UNDER CERTAIN CIRCUMSTANCES WHEN "EXTRAORDINARY AND COMPELLING REASONS WARRANT SUCH A REDUCTION" 18 U.S.C. 3582 (c)(1)(A). THE STATUTE WAS FIRST ENACTED AS PART OF THE COMPREHENSIVE CRIME CONTROL ACT OF 1984 TO SERVE AS A "SAFETY VALVE" TO ENABLE JUDGES TO REASSESS WHETHER A SENTENCING REDUCTION WAS WARRANTED BY FACTORS PREVIOUSLY ADDRESSED THROUGH THE ABOLISHED PAROLE SYSTEM. 8. REP. NO. 98-225 AT 221 (1983). THE SENTENCING COMMISSION DEFINED "EXTRAORDINARY AND COMPELLING REASONS" AS INCLUDING "MEDICAL CONDITIONS," AGE, FAMILY CIRCUMSTANCES AND OTHER REASONS" U.S.S.G. 1B1.13 COMMENT (1). AS ORIGINALLY ENACTED THE STATUTE LEFT SOLE DISCRETION FOR FILING COMPASSIONATE RELEASE MOTIONS WITH THE DIRECTOR OF THE BUREAU OF PRISONS (BOP).

## II

### B) COMPASSIONATE RELEASE AFTER THE FIRST STEP ACT:

ON DECEMBER 21ST, IN 2018 PRESIDENT DONALD J. TRUMP SIGNED THE FIRST STEP ACT INTO LAW, SIGNIFICANTLY CHANGING SECTION 3582 MOST SIGNIFICANTLY BY ALLOWING DEFENDENTS TO DIRECTLY PETITION COURTS FOR RELIEF INSTEAD OF LEAVING RELIEF DECISIONS SOLELY WITH THE BOP 18 USC 3582 (c)(1)(A). THE COMPASSIONATE RELEASE STATUTE AS AMENDED BY THE FIRST STEP ACT AUTHORIZES DISTRICT COURTS ONCE CERTAIN CONDITIONS ARE MET, TO

GRANT... A SENTENCING REDUCTION UNDER 18 USC 3582 (c)(1)(4) WHERE EXTRAORDINARY AND COMPELLING REASONS WARRANT SUCH A REDUCTION "AND A REDUCTION [WOULD BE] CONSISTENT WITH APPLICABLE POLICY STATEMENTS ISSUED BY THE SENTENCING COMMISSION" SEE U.S.S.G. 1B1.13. THE SENTENCING COMMISSIONS POLICY STATEMENT ALSO DIRECTS THAT THE COURT MUST DETERMINE THAT "THE DEFENDANT IS NOT A DANGER TO THE SAFETY OF ANY OTHER PERSON OR THE COMMUNITY AS PROVIDED IN 18 USC 3142 (4) AND MUST CONSIDER "THE FACTOR SET FORTH IN 18 USC 3553 (4) TO THE EXTENT THEY ARE APPLICABLE" SEE U.S.S.G. 1B1.13

- C. THE PETITIONER DID FILE AT ESTILL AND THEN A TORNADO HIT ESTILL SO HE WAS MOVED ON A EMERGENCY EVACUATION. HE STILL ASK PERMISSION AND NOTE NOTE TO SPEED UP THE PROCESS SOME COURTS WAS PERMITTING PEOPLE TO FILE.

### III

THE HONORABLE COURT SHOULD GRANT THE PETITIONER COMPASSIONATE RELEASE SO COVID-19 DOES NOT RENDER HIS REMAINING IMPRISONMENT TERM A DEATH SENTENCE.

THE PRESENT MOTION FOR COMPASSIONATE RELEASE IS BASED ON CONDITIONS THAT HAVE RADICALLY CHANGE IN THE 20 YEARS SINCE THE UNDERLYING CONVICTION APPLYING HONORABLE U.S. DISTRICT JUDGE GWINS ORDER TO THE BOP CITED ABOVE, *INFRA* 4<sup>th</sup> PG 2023 THAN THE PETITIONER MEETS ALL CRITERIA FOR COMPASSIONATE RELEASE FOR SEVERAL REASONS.

- 1) HIS CHRONIC MEDICAL CONDITION THAT IS ASTHMA, HIGH BLOOD PRESSURE, ONE LUNG, BRONCHITIS
- 2) THE POOR SANITARY CONDITIONS AT HIS FACILITY WHICH INCLUDE BUT ARE NOT LIMITED TOO

- A) INMATES MUST SHARE COMMONAL LIVING SPACES, PHONES, COMPUTERS, BATHROOMS AND SHOWER WHICH ARE NOT DISINFECTED AFTER EACH OR REGULAR USE. (SEE SURVILLANCE VIDEO)
- B) Social distancing is IMPOSSIBLE TO ACHIEVE ESPECIALLY AS INMATES WAIT IN LONG LINES ONE NEXT TO THE OTHER AS THEY TRY TO MAKE A PHONE CALL OR USE A COMPUTER (SEE SURVILLANCE VIDEO)
- C) THE BOP DOES NOT PROVIDE HAND SANITIZER, MUCH LESS INCLUDE IT AS AN ITEM TO BE PURCHASED AT COMMISSARY.
- D) UNIT OFFICERS REGULARLY WEAR THEIR MASKS ON THEIR CHIN CHEW TOBACCO AND AS THEY DO THEIR ROUNDS SIT IN BOTTLES OR CUPS THEY SERVE INMATES THEIR MEALS WITH OUT WEARING GLOVE (DURING LOCK DOWN) ON A REGULAR BASIS (SEE SURVILLANCE VIDEO) AND
- E) THE BOP IS EXPERIENCING A SERIOUS COVID-19 OUT BREAK IN MANY OF ITS FACILITIES.

FOR ALL OF THE ABOVE IT IS ONLY A MATTER OF TIME FOR COVID-19 TO FIND ITS WAY INTO USP LEWISBURG

- 3) THE PETITIONER HAS SERVED APPROXIMATELY 20 YEARS OF HIS IMPRISONMENT TERM
- 4) THE PETITIONER HAS A FAIR DISCIPLINE RECORD
- 5) THE PETITIONER HAS CONTINUOUS PROGRAMMING

- 6) HE POSES A minimal risk if any to public safety which can be managed through home confinement and supervision conditions and
- 5) THE 18 USC 3553 (4) FACTORS SUPPORT HIS RELEASE

### III

A COVID-19 OUT BREAK AT THE BOP PRESENTS "EXTRAORDINARY AND COMPELLING REASON" WARRANTING COMPASSIONATE RELEASE

ON MARCH 11<sup>TH</sup> AND 2020 THE WORLD HEALTH ORGANIZATION (WHO) OFFICIALLY CLASSIFIED THE SPREAD OF COVID-19 THE DISEASE CAUSED BY NOVEL CORONA VIRUS AS A PANDEMIC ON MARCH 13<sup>TH</sup> 2020 PRESIDENT DONALD J. TRUMP DECLARED A NATIONAL EMERGENCY DUE TO THE EVOLVING THREAT OF THE CORONAVIRUS (COVID-19) OUT BREAK. TO SLOW THE SPREAD OF THE DISEASE THE CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC) HAS BROADLY ADVISED PEOPLE TO TAKE BASIC PREVENTIVE ACTIONS, SUCH AS AVOIDING CROWDS STAYING SIX FEET AWAY FROM OTHER KEEPING SURFACES DISINFECTED AND FREQUENTLY WASHING THEIR HANDS OR USING HAND SANITIZER (SEE [HHS: //bit.ly/2w8dups](https://bit.ly/2w8dups)) THESE PRECAUTIONS ARE IMPOSSIBLE FOR INCARCERATED INDIVIDUALS AS SUCH PUBLIC HEALTH EXPERTS WARN THAT INCARCERATED INDIVIDUALS "ARE AT SPECIAL RISK OF INFECTION" AND ARE "LEAST ABLE TO PARTICIPATE IN PROACTIVE MEASURES TO KEEP THEMSELVES SAFE" (SEE <https://bit.ly/2w9u608>)

CONTRIBUTING TO THE RAPID SPREAD OF COVID-19 ARE CIRCUMSTANCES INMATE TO PRISON LIFE INMATES MUST SHARE COMMUNAL LIVING SPACES BATHROOM AND SHOWER TELEPHONES AND

COMPUTERS ALL OF WHICH ARE TOUCHED BY HUNDREDS OF HANDS WHICH ARE NOT PROPERLY SANITIZED HAND SANITIZER, EFFECTIVE DISINFECTANT RECOMMENDED BY THE CDC TO REDUCE TRANSMISSION IS DEEMED FORBIDDEN "CONTRABAND" IN BOP FACILITIES BECAUSE OF ITS ALCOHOL CONTENT Keri Blakinger and Beth Schwarzapel "How CAN PRISONS CONTAIN CORONAVIRUS WHEN POWELL IS CONTRABAND? ABA JOURNAL (MARCH 13 2020 <http://abajournal.com/>)

U.S.S.G. 1B1.13 APPLICATION NOTE 1 (D) STATES THAT "OTHER REASONS" MAY EXIST "OTHER THAN OR IN COMBINATION WITH THE REASONS DESCRIBED IN SUBDIVISION (A) THROUGH (C)" FOR MEDICAL CONDITION, AGE AND FAMILY CIRCUMSTANCES THERE IS NO FURTHER GUIDANCE FROM AN UPDATED POLICY STATEMENT REGARDING WHAT COULD BE CONSIDERED "OTHER REASONS" JUSTIFYING A SENTENCE REDUCTION "FOR THIS REASONS, ANY ASSESSMENT OF WHETHER A COURT ACTED "CONSISTENT WITH U.S.S.G. 1B1.13. BASED ON REASONS OTHER THAN THOSE SPECIFICALLY MENTIONED IN APPLICATION NOTE 1 (A)-(C) MUST CONSIDER THE FIRST STEP ACT EFFECT ON THAT POLICY STATEMENT AND APPLICATION NOTE 1 (D) IN PARTICULAR" U.S. V. REED, NO-1:97-CR-006, 2020 WL 1248493, AT 7 (E.D. VA MARCH 16, 2020) (CITING 18 USC 3553 (A)(5) (ANY PERTINENT POLICY STATEMENT "IS TO BE CONSIDERED" SUBJECT TO ANY AMENDMENTS MADE TO SUCH POLICY STATEMENT BY ACT OF CONGRESS (REGARDLESS OF WHETHER SUCH AMENDMENTS ISSUED UNDER SECTION 994 (P1 OF TITLE 28')) THIS HONORABLE COURT SHOULD THEREFORE CONCLUDE THAT "EXTRAORDINARY AND COMPELLING CIRCUMSTANCES EXIST BASED

ON THE FACTS AND CIRCUMSTANCES THAT IS "OTHER REASONS"  
LIKE THOSE CITED ABOVE IN FRA AT PS 1-3 WHICH ARE  
OTHER THAN THOSE SET FORTH IN SECTION 151.13 CMT 21  
(A)-(C) IS AT \*8 N 18

(COLLECTING CASES, IN AGREEMENT)

FERNANDEZ-RODRIGUEZ V LICON-VITALE CASE NO 1:20-CV-03315  
(SANY)

Gravis V. Spaulding, no 20 cv 10738 /

U.S. V. WILLIAMS-BETHEA (NO-18-CR-78 (JMF) (SANY) (JUNE 2 2020)

US. V. ANDERSON (NO-16-CR-824-1 (JMF) (SANY) (JUNE 2 2020)

US V. OZOLIS (NO 16-CR-692-7) (JMF) (SANY) (JUNE 2 2020)

US V. TORRES (NO. 87-CR-593 (SHS) (SANY) (JUNE 2 2020)

Closing Argument

THE PETITIONERS SHOULD BE GRANTED BECAUSE HE HAS MEDICAL  
CONDITION AND HAS LAW BEHIND HIM.

ALSO I WANT THE COURT'S TO KNOW I'M FORWARD MEDICAL  
RECORDS, FROM MY MOTHER SHE HAS COPY'S AND I'M WAITING ON  
LEWISBURG PRISON'S TO FORWARD ME THE COPY'S BUT MY DEAD  
LINE IS 6-17-2020. AND I'M SETTING THIS OUT

6-15-2020. THE PETITIONER RELYING ON FACTS AND LAW, HE  
WILL NOT INTERRAIN. BAD AND FALSE JUDGEMENT, DEFINITELY NO  
CROSS REFERENCE. THE JURY SAID NOT GUILTY!!

Therrell

6-15-2020

Inmate Name: KEVIN ALLEN  
Register Number: 75021054  
United States Penitentiary  
P.O. Box 1000  
Lewisburg, PA 17837

16 JUN 2020  
MS

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US MAIL

HONORABLE JOHN G. KOEHL  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
500 PEARL STREET  
NEW YORK NY 10007



KEVIN ALLER

V.

UNITED STATES OF AMERICA

00CR.977 (JGK)

COMES NOW KEVIN ALLER, MAKE A "SOR REPLY" TO THE GOVERNMENT'S MOTION DATED 6-19-2020 TO WIT:

THE GOVERNMENT INSIST IN ONE VEIN THAT MR. ALLER'S DID NOT EXHAUST HIS REMEDIES "THEN IN ANOTHER VEIN THE GOVERNMENT STATES HIS CASE MANAGER STATED HE FILED SOMETHING. IT'S NOT THE PETITIONER'S FAULT. RECORDS / OR HIS REQUEST WAS NOT SUBMITTED. THIS COURT HAS JURISDICTION.

SECOND -

THE US ATTORNEY LEAN'S HEAVY ON MURDER'S; FOR ONE THE DEFENDENT WAS FOUND "NOT GUILTY" FOR "ONE MURDER" AS TOO THE SECOND THE GOVERNMENT DOES NOT KNOW WHAT ROLE / NEITHER DID THE JURY AS OF THIS DAY THERE'S / NO REAL "PROOF" OF DIRECT INVOLVEMENT RATHER HE WAS FOUND GUILTY OF CONSPIRACY, BECAUSE THE JURY WAS INCLUSIVE ABOUT WHAT ROLE HE PLAYED..

AS A NOTE TO THIS COURT THE GOVERNMENT HAS ADMITTED. MR ALLER'S "IS AT RISK OF DEATH.

[PG 2 GOV RESPONSE PARAGRAPH 4 LINES (32)] AND THE GOVERNMENT SLAPS BOP'S SELF HELP PROGRAMS RIGHT IN THE FACE STATING MR. ALLER IS THE SAME MAN.

WHERE INFACT WENT GREAT LENGTHS TO  
REHABILITATE HIM SELF.

(NOTE)

AS IT MAY APPEAR THERE NO COVID-19  
CASES AT U.S.P. LEWISBURG IT'S ALSO APPARENT,  
THAT NOT ONE INMATE HAS BEEN TESTED. SO NO  
ONE KNOW WHO'S INFECTED. / OR SIMPLY THE  
PETITIONER REQUEST THAT THE GOVERNMENT PROVIDE  
THIS COURT WITH THE NAMES OF INMATE WHO HAVE  
BEEN SINCE THEY ARE FOR SURE.  
I LIVE HERE NO ONE BEEN TESTED, NOR STAFF.

*Kevin Allen*  
KEVIN ALLEN

### CERTIFICATE OF SERVICE

I HERBY CERTIFY THAT A TRUE COPY WAS SENT TO  
THE DISTRICT COURT CLERK TO BE SERVED UPON  
ALL INTERESTED PARTIES. POSTAGE PRE PAID FOR  
PRO SE PRISONERS

DATED THIS 25<sup>TH</sup> DAY OF JUNE 2020

